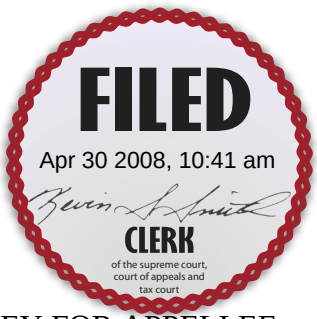

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF D.D., Minor Child, and RHONDA D., Mother,	)	
RHONDA D.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0707-JV-385
MARION COUNTY DEPARTMENT OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner,	)	
CHILD ADVOCATES,	)	
Appelle- Guardian ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0704-JT-13538

April 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Rhonda D. ("Mother") appeals the termination of her parental rights to her son, D.D. As the juvenile court's judgment is supported by clear and convincing evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother, D.D.'s biological mother and sole legal custodian,[1] was arrested July 25, 2006, at a McDonald's restaurant in Indianapolis, Indiana, for possession of drug paraphernalia. Police were called to the restaurant because Mother was allegedly using drugs in the restaurant's bathroom. D.D. was with Mother at the time of her arrest and eventually was placed in foster care with his aunt and uncle.

On September 20, 2006, the Marion County Department of Child Services ("MCDCS") alleged D.D. was a child in need of services ("CHINS") in that his "physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of [his] parent . . . ." (Ex. 1 at 3.) The CHINS petition further stated that Mother admitted to MCDCS caseworker Amanda Yanez she had a heroin addiction.

On the same day, Mother, who was represented by counsel, admitted the allegations in the CHINS petition. The juvenile court accepted Mother's admission,

[1] Lamondrick J., D.D.'s alleged father, is deceased.

found D.D. to be a CHINS, and proceeded to disposition. D.D. was removed from Mother's care under the dispositional decree and made a ward of MCDCS. Following the dispositional hearing, the trial court entered a parental participation decree that directed Mother to engage in a variety of services in order to achieve reunification with D.D., including a parenting assessment and classes, drug and alcohol assessment along with any recommended treatment, random drug testing, home-based counseling, and regular visitation with D.D. as recommended by the MCDCS caseworker.

On April 3, 2007, MCDCS petitioned for the involuntary termination of Mother's parental rights. A placement review and initial hearing on the termination petition was held on April 11, 2007. Mother did not appear but was appointed counsel. The termination hearing was held July 5, 2007, and on July 9, 2007, the juvenile court issued its judgment terminating Mother's parental rights to D.D. The juvenile court made the following relevant findings:

> 3. [D.D.] was originally removed from Mother because of a report that Mother was using [heroin] in front of her son at a McDonalds.
>
> 4. Mother was ordered to complete services and she completed a Parenting Assessment. Prior to one month ago, Mother used [heroin] every other day since she was 19 years old. She is now 26 years old. Mother is addicted to [heroin] and was referred to an inpatient detox program.
>
> 5. At least four referrals for inpatient treatment were made and Mother did not complete any of them. The most recent referral was in May of 2007, when she stayed 5 days and then left before completing the 14 day program.
>
> 6. Mother has not consistently attended visits with [D.D.] and because of two consecutive missed visits, her supervised visits were suspended.

7. Mother reports that she has not used illegal drugs since her 5 day stay at Harbor Lights. This testimony is undisputed but it cannot be disputed or confirmed because Mother failed to comply with random urine screens.

8. Mother reports that she has stable housing and employment. This testimony is undisputed but it cannot be disputed or confirmed because, though she brought a lease agreement to Court which was admitted as Respondent's Exhibit A, Mother has failed to provide verification of either employment or housing to her case manager prior to the date of trial.

(App. at 7-8.)[2]

DISCUSSION AND DECISION

Mother asserts the judgment terminating her parental rights to D.D. is not supported by clear and convincing evidence. Specifically, Mother claims MCDCS did not prove a reasonable probability that the conditions resulting in D.D.'s removal and continued placement outside Mother's care would not be remedied because "[MCDCS] allowed Mother only seven months to complete the services required of her . . . [and] [g]iven this short period of time . . . it is impossible to determine . . . the condition would not be remedied." (Appellant's Br. at 7.) Mother also asserts MCDCS "did not present any evidence from which the court could conclude the continuation of Mother's relationship with D.D. posed a threat to his well-being." (*Id.)*

[2] On January 15, 2008, Appellant filed a Motion to Strike Appellee's Brief for failure to comply with service requirements pursuant to Ind. Appellate Rule 24. In an order handed down contemporaneously with this opinion, we have granted Appellant's Motion to Strike. *See* Ind. Appellate Rule 35(C) ("No motion for extension of time shall be granted . . . in appeals involving termination of parental rights."); *see also* Unpublished Order Denying Emergency Mot. Tran., 49A05-0701-JV-31 (July 23, 2007) (emphasizing Ind. App. Rule 35(C)'s prohibition against extensions of time in appeals involving termination of parental rights).

This Court has long had a highly deferential standard when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

In the instant case, the juvenile court made specific findings. Normally, where a court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*; *see also Bester*, 839 N.E.2d at 147. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

Here, however, our standard of review is complicated because we have struck MCDCS' brief for failure to timely serve Appellant in accordance with App. R. 24(B). When an appellee does not submit a brief in accordance with our rules, we need not undertake the burden of developing an argument for the appellee, and we may reverse if the Appellant can establish *prima facie* error. *Miller v. Reinert*, 839 N.E.2d 731, 737 (Ind. Ct. App. 2005), *trans. denied.* In this context, "*prima facie*" is defined as "at first sight, on first appearance, or on the face of it." *Id*. We are not, however, relieved of our

obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required. *Perkins v. Harding*, 836 N.E.2d 295, 295 n.2 (Ind. Ct. App. 2005).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To terminate a parent-child relationship, the State is required to allege and prove:

> (A) [o]ne (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * * * *
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and,
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother's sole contention on appeal is that MCDCS failed to prove either the conditions resulting in D.D.'s removal and continued placement outside the home will not be remedied, or continuation of the parent-child relationship poses a threat to D.D.'s well-being.

Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so the juvenile court need find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Accordingly, we first review whether clear and convincing evidence supports the juvenile court's finding that the conditions resulting in the children's removal and continued placement outside the home of the parents will not be remedied.

When determining whether there is a reasonable probability that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The juvenile court may also properly consider the services offered to a parent, and the parent's response to those

services, as evidence of whether conditions will be remedied. *Id.* MCDCS is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

There is clear and convincing evidence supporting the juvenile court's findings. Mother admitted using heroin daily or every-other-day until just one month prior to the termination hearing. Emily Haile is a licensed clinical social worker at Midtown Child Adolescent Center who performed Mother's parenting assessment. She testified that during the parenting assessment, Mother admitted she had used marijuana, cocaine, and heroin. She further testified that Mother said she began using cocaine at age nineteen and heroin at age twenty-one. Haile testified Mother reported using heroin every other day. At the time of the parenting assessment, Mother tested positive for codeine, morphine, and marijuana.

MCDCS case manager Christopher Powell testified Mother completed the first portion of the parenting assessment, but not the second. He referred Mother for inpatient drug "detox" at Salvation Army Harbor Lights during the initial phase of the case on July 27, 2006, and again on August 21, 2006, December 14, 2006, and May 7, 2007. (Tr. at 66-67.) Despite numerous referrals, Mother did not to participate in any substance abuse treatment program, except for an intensive inpatient program in May 2007, and she participated for only five days of the fourteen-day program.

Powell made four referrals for Mother to participate in drug screens, but never received documentation that Mother had been tested. Mother did not provide Powell

with verification of employment and housing, did not complete a psychological evaluation as recommended by the parenting assessment, and did not maintain regular contact with MCDCS.

When asked whether he felt it was in D.D.'s best interest to give Mother more time to complete services, Powell responded, "Based on the track record from 2006, I would say that [MCDCS] has given sufficient amount of time, a year, to do this . . . [s]o, no, I do not think we should give her more time." *Id.* at 75.

"[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007). D.D. was originally removed from Mother's care as a result of Mother's illegal drug use. Since D.D.'s removal, despite a wealth of services offered and people willing to help her, Mother failed to achieve stability during that time. Mother admitted she is addicted to heroin and has used drugs on a daily basis since she was nineteen, but did not complete any court-ordered service or substance abuse program.

In light of the clear and convincing evidence that supports the juvenile court's findings, Mother has not demonstrated *prima facie* error in the juvenile court's determination there is a reasonable probability the conditions resulting in D.D.'s removal from the care and custody of Mother will not be remedied. D.D. need not wait until Mother is willing and able to obtain, and benefit from, the help she needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (court will not put the children "on

a shelf" until their mother is capable of caring for them). The judgment is therefore affirmed.

Affirmed.

RILEY, J., and KIRSCH, J., concur.